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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,991	10/15/2003	Robert Cantwell	23937-43	7432

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EXAMINER

GROSSO, HARRY A

ART UNIT PAPER NUMBER

3727

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/686,991

Applicant(s)

CANTWELL ET AL.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-8 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub et al (6,364,329) in view of Spykerman, of record.

3. Regarding claims 1 and 2, Holub et al discloses an insulated container (Figures 1A-1B, column 2, lines 53-65, column 3, lines 22-30). The top panel (110) has a beverage holder (116, Figure 10A, column 6, lines 17-34). The bottom of the cup holder is of the same material as the lid and, thus, prevents heat transfer. Holub et al does not teach an expandable beverage holder. Spykerman discloses a beverage holder mounted in a flat panel with an expandable portion that is in a lowered position for larger containers and can be expanded upward to handle taller or smaller diameter containers (Figures 2 and 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the expandable feature of the beverage holder disclosed by Spykerman in the top panel of the container of Holub et al if an outwardly expanding beverage holder was desired so it could accommodate larger containers in one position or be expanded upward to handle taller or smaller diameter containers.

4. Regarding claim 3, the expandable feature of Holub et al as modified by Spykerman expands into the storage space by extending below the upper surface of the

lid when moved from the upward position (Figure 3) to the lowered position (Figure 2) to accommodate larger diameter containers.

5. Regarding claim 5, the expandable portion of the beverage holder of Holub et al as modified by Spykerman is made of a resilient material, which would allow some level of heat transfer.

6. Regarding claim 6, the beverage holder of Holub et al as modified by Spykerman is expanded using an extending construction.

7. Regarding claim 8, Holub et al discloses the body is coupled to the cover by hinges (115, column 2, lines 57-58).

8. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil et al (2005/0072181 A1) in view of Spykerman, of record.

9. Regarding claims 1 and 2, Mogil et al discloses an insulated container (Figures 1A-1B, 6A, paragraphs 0095 and 0162). The top panel (334) has a beverage holder (342, Figure 6A, paragraph 0162). The bottom of the cup holder is of the same material as the lid and, thus, prevents heat transfer. Mogil et al does not teach an expandable beverage holder. Spykerman discloses a beverage holder mounted in a flat panel with an expandable portion that is in a lowered position for larger containers and can be expanded upward to handle taller or smaller diameter containers (Figures 2 and 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the expandable feature of the beverage holder disclosed by Spykerman in the top panel of the container of Mogil et al if an outwardly expanding beverage holder was desired so it could accommodate larger

containers in one position or be expanded upward to handle taller or smaller diameter containers.

10. Regarding claim 3, the expandable feature of Mogil et al as modified by Spykerman expands into the storage space by extending below the upper surface of the lid when moved from the upward position (Figure 3) to the lowered position (Figure 2) to accommodate larger diameter containers.

11. Regarding claim 5, the expandable portion of the beverage holder of Mogil et al as modified by Spykerman is made of a resilient material, which would allow some level of heat transfer.

12. Regarding claim 6, the beverage holder of Mogil et al as modified by Spykerman is expanded using an extending construction.

13. Regarding claim 7, Mogil et al discloses the body of the container is soft-sided and the outer edge of the top would have to be of the same soft-sided construction for the fabric hinge on the back edge of the top and to accommodate the zipper shown in Figure 6A.

14. Regarding claim 8, Mogil et al discloses the body is coupled to the cover by a fabric hinge (paragraph 0105)..

#### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-3 and 5-8 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

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